

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

ROBERT KEYES,

Plaintiff

v.

C-1-07-503

CAR-X AUTO SERVICE, *et al.*,

Defendants

This matter is before the Court upon the Report and Recommendation of the United States Magistrate Judge (doc. no. 59), defendants' objections (doc. no. 60) and plaintiff's response (doc. no. 64). The Magistrate Judge concluded that Count IV of the Complaint should be dismissed and, at this time, questions of fact exist which preclude the granting of summary judgment with regards to Count III. The Magistrate Judge therefore recommended that defendant's Motion for Partial Summary Judgment (doc. no. 14) be denied. Additionally, the defendant objects to the Order of the Magistrate Judge entered November 7, 2008 granting an extension of time pursuant to Rule 56(f).

Upon review, the Court concludes the Magistrate Judge correctly granted the extension of time pursuant to Rule 56(f). Additionally, the defendant's objection to this Court was not timely made. Fed. R. Civ. P. 72(b). Defendant's objection is **DENIED**.

Upon a *de novo* review of the record, the Court finds that defendants' remaining objection has been adequately addressed and properly disposed of by the Judge. The Court finds that the resolution of the issue presented by the parties requires the determination of disputed facts, the Magistrate Judge has accurately set forth the controlling principles of law, and has properly applied them to the particular facts of this case.

Accordingly, the Court hereby **ADOPTS** the Report and Recommendation of the United States Magistrate Judge (doc. no. 59). Defendants' Partial Motion for Summary Judgment (doc. no. 14) is **GRANTED** as to Count IV and **DENIED** as to Count III. This case is **RECOMMENDED** to the United States Magistrate Judge for further proceedings according to law.

IT IS SO ORDERED.

s/Herman J. Weber
Herman J. Weber, Senior Judge
United States District Court